

## **Exhibit I**

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Philadelphia, PA

April 17, 2007

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

-----X MDL NO. 1456  
IN RE: PHARMACEUTICAL INDUSTRY : CIVIL ACTION:  
AVERAGE WHOLESALE PRICE LITIGATION : 01-CV-12257-PBS  
-----X

THIS DOCUMENT RELATES TO: :  
U.S. ex rel. Ven-A-Care of the : CIVIL ACTION:  
Florida Keys, Inc. v. Abbott : 06-CV-11337-PBS  
Laboratories, Inc. :  
-----X

IN THE CIRCUIT COURT OF  
MONTGOMERY COUNTY, ALABAMA

-----X  
STATE OF ALABAMA, : CASE NO.  
Plaintiff, : CV-05-219  
v. :  
ABBOTT LABORATORIES, INC., : JUDGE  
et al., : CHARLES PRICE  
Defendants. :  
-----X

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<p style="text-align: right;">Page 330</p> <p>1 was following the fact that they had to pay at AWP. 2 BY MR. COOK: 3 Q. And to the extent that HCFA promulgated 4 a regulation, HCFA determined that it believed, at 5 least, that that was the appropriate amount, 6 correct? 7 MR. NEAL: Objection as to form. 8 THE WITNESS: I don't know if they felt 9 it was appropriate. 10 BY MR. COOK: 11 Q. Did you ever discuss with anybody at 12 HCFA what they thought was an appropriate amount of 13 reimbursement? 14 MR. NEAL: I'm going to object to the 15 question. 16 In fact, I'm going to instruct you not to 17 answer to the extent that that would reveal any 18 communications that took place at exit or entrance 19 conferences. You've stated that you didn't -- you 20 don't have any recollection of those conferences. 21 If you can answer the question without 22 referring to any communications that took place</p>	<p style="text-align: right;">Page 332</p> <p>1 level of reimbursement for Medicare Part B paid 2 drugs? 3 MR. NEAL: Objection. 4 You can answer that to the extent that 5 you do not reveal communications that took place at 6 entrance or exit conferences. 7 THE WITNESS: I believe based on the 8 options we provided them, those were some of the -- 9 the discussion was based on the -- our 10 recommendations. 11 BY MR. COOK: 12 Q. Do you recall, did HCFA implement any of 13 your recommendations? 14 A. I -- can I go back and read them? 15 Q. Sure. 16 A. May I go back and read them? 17 Q. Absolutely. It's at Page 7 of Exhibit 18 Abbott 060. 19 A. I believe, and I don't remember if it 20 was regulatory or legislated, that there was a 21 change made to AWP in later years to provide that 22 Medicare pay a discounted rate.</p>
<p style="text-align: right;">Page 331</p> <p>1 there, you can answer the question. 2 THE WITNESS: Would you repeat the 3 question again, please? 4 BY MR. COOK: 5 Q. Sure. 6 MR. NEAL: That was a lengthy objection. 7 I apologize. There are privilege concerns. 8 BY MR. COOK: 9 Q. Did you ever discuss with anybody at 10 HCFA what HCFA believed would be an appropriate 11 amount of reimbursement for drugs under Medicare 12 Part B? 13 A. I don't remember if we discussed that at 14 the entrance and exit conferences. 15 Q. At any time, with any HCFA official, did 16 you discuss what an appropriate amount of Medicare 17 reimbursement would be? 18 A. I don't remember discussing what the 19 exact amount of appropriate reimbursement would be. 20 Q. Leaving aside an exact precise amount, 21 do you remember discussing with any HCFA officials 22 how one would go about determining an appropriate</p>	<p style="text-align: right;">Page 333</p> <p>1 Q. And that would be 95 percent of AWP; is 2 that correct? 3 A. That's the figure I remember. 4 Q. And that would have been the Balanced 5 Budget Amendment -- Balanced Budget Act of 1997; 6 does that sound right? 7 A. It sounds right. 8 Q. Okay. 9 A. I don't believe that they'd ever 10 instituted a manufacturer rebate. I do believe 11 that there are items being competitively bid now. 12 I recall discussions about inherent -- inherent 13 reasonableness. I do not know if CMS ever did it. 14 And I do not believe that they have -- are paying 15 based on an estimated -- based on an estimated 16 acquisition cost, using that term. 17 Q. And so you made the recommendation that 18 discounted wholesale price would get to, perhaps, 19 an appropriate reimbursement amount for Albuterol 20 Sulfate, correct? 21 MR. NEAL: Objection as to form. 22 THE WITNESS: I think that the</p>

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<p style="text-align: right;">Page 366</p> <p>1 Q. Did you have a range of amounts that 2 would have been appropriate in mind? 3 MR. NEAL: The same objection. 4 THE WITNESS: I don't -- I don't remember 5 exactly what I recalled at the time I was writing 6 this, but I don't think I had a range of amounts 7 that I thought would be appropriate. 8 BY MR. COOK: 9 Q. And sticking with the summary findings, 10 you found that the Department of Veterans Affairs 11 -- well, let me switch that over and strike that. 12 You found that Medicare pays between 56 13 percent and 550 percent more than the Department of 14 Veterans Affairs for Albuterol Sulfate in 1998; is 15 that correct? 16 A. That's the way I read that statement. 17 Q. And that was the finding in the report 18 that you drafted, correct? 19 A. Yes. 20 Q. And as the project leader, you would 21 have drafted the report? 22 A. Most likely, yes.</p>	<p style="text-align: right;">Page 368</p> <p>1 1998 report? 2 MR. NEAL: Objection as to form. 3 You can answer. 4 THE WITNESS: I -- I don't remember. I'd 5 have to read the comments, the CMS comments of the 6 report. 7 BY MR. COOK: 8 Q. And where would I find those? 9 A. If the agency commented, it would be in 10 the back -- it's in the back of the report. 11 Q. And so that would be this June 11, 1998 12 memo to June Gibbs Brown from Nancy-Ann Min 13 DeParle; is that correct? 14 A. Yes. 15 Q. Looking at that report, it indicates: We 16 reviewed the above-referenced report. 17 Any reason to believe that the Health Care 18 Finance Administration had not reviewed the report? 19 A. I have no reason to believe that, since 20 the statement says that they reviewed it. 21 Q. It indicates, in the second paragraph 22 there, that: HCFA concurs with the intent of the</p>
<p style="text-align: right;">Page 367</p> <p>1 Q. And the second point under this was that 2 Medicare allowed 20 percent more than the average 3 Medicaid payment for Albuterol Sulfate in 1997; is 4 that correct? 5 A. Yes. 6 Q. You further found that Medicare allowed 7 up to 333 percent more than acquisition costs 8 available for Albuterol Sulfate in 1998, correct? 9 A. Yes. 10 Q. And finally, you found that the 11 customers of mail order pharmacies would pay up to 12 30 percent less than Medicare for Albuterol Sulfate 13 in 1998, correct? 14 A. Yes. 15 Q. Do you remember what it was that 16 prompted you to issue an additional report in 17 August 1998, following your June 1996 report on 18 Albuterol Sulfate? 19 A. I don't remember. 20 Q. To your knowledge, had HCFA taken any 21 actions to respond to the recommendations in your 22 June 1996 report at the time you issued this August</p>	<p style="text-align: right;">Page 369</p> <p>1 OIG report recommendation. 2 And then goes on to make specific responses. 3 Do you recall HCFA concurring with the intent 4 of your recommendations in June of 1998? 5 A. I do not recall it. I'm reading it here 6 now. 7 Q. But you would have had communications 8 with HCFA officials, correct? 9 A. This would have been the official 10 communication on their concurrence or 11 nonconcurrence with the findings and 12 recommendations of the report. 13 Q. But in addition to this, you would have 14 had an entrance -- an entrance meeting, right? 15 A. Normally we would. I can't tell you if 16 we absolutely had it for here. We would have 17 normally had an entrance and an exit conference for 18 this report. 19 Q. Any reason to believe that any of the 20 sentiments expressed in the entrance and exit 21 conferences for this report varied from the 22 official responses given by Ms. Min DeParle in this</p>

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<p style="text-align: right;">Page 370</p> <p>1 memo?</p> <p>2 MR. NEAL: I'm going to object to the</p> <p>3 question and instruct you not to answer.</p> <p>4 BY MR. COOK:</p> <p>5 Q. Ms. Ragone --</p> <p>6 MR. MERKL: You're not going to let her</p> <p>7 answer that yes or no?</p> <p>8 MR. NEAL: Answering it yes or no would</p> <p>9 possibly implicate the substance of communications</p> <p>10 that she had in an exit conference concerning this</p> <p>11 report.</p> <p>12 BY MR. COOK:</p> <p>13 Q. Generally speaking, Ms. Ragone, did you</p> <p>14 ever find it to be the case that your oral</p> <p>15 communications with officials at HCFA conflicted at</p> <p>16 all with the written responses that they would</p> <p>17 submit to the Office of Inspector General?</p> <p>18 MR. NEAL: You can answer that generally.</p> <p>19 THE WITNESS: Generally, for our -- in</p> <p>20 our -- all of our inspections, not just</p> <p>21 prescription drugs, there have been times when</p> <p>22 there haven't been what we believed to be</p>	<p style="text-align: right;">Page 372</p> <p>1 MR. NEAL: I'm going to object --</p> <p>2 MS. POLLACK: Objection.</p> <p>3 MR. NEAL: -- to the form of the</p> <p>4 question.</p> <p>5 THE WITNESS: I don't know --</p> <p>6 MR. NEAL: You can answer.</p> <p>7 THE WITNESS: I don't know if you would</p> <p>8 get from those what the whole agency intended or</p> <p>9 knew about it. You would just -- if you heard</p> <p>10 anything, it would be the people that were in that</p> <p>11 room, and not everybody in those converse -- in</p> <p>12 those conferences speaks, so I don't know what you</p> <p>13 would get from those. I don't remember the</p> <p>14 conversations.</p> <p>15 BY MR. COOK:</p> <p>16 Q. But there would -- you admit that there</p> <p>17 would be more information about what the agency</p> <p>18 knew and intended from those communications than</p> <p>19 from simply the written comments submitted,</p> <p>20 correct?</p> <p>21 MR. NEAL: I'm going to object to the</p> <p>22 form of the question.</p>
<p style="text-align: right;">Page 371</p> <p>1 objections raised during these conversations, and</p> <p>2 then when we get the formal comments, there will be</p> <p>3 technical comments or objections raised that we</p> <p>4 never heard at the exit conference.</p> <p>5 BY MR. COOK:</p> <p>6 Q. And so if -- back up one. Have you ever</p> <p>7 had the experience where an objection was raised at</p> <p>8 the exit conference that was not reflected in the</p> <p>9 written --</p> <p>10 A. Yes --</p> <p>11 Q. -- comments?</p> <p>12 A. -- I believe I've had an experience</p> <p>13 where somebody has raised a personal objection,</p> <p>14 their feelings, and that doesn't become part of the</p> <p>15 formal comments back to our agency.</p> <p>16 Q. And so if Abbott and the other</p> <p>17 defendants were seeking to determine what it is</p> <p>18 that HCFA knew and what it is that HCFA intended to</p> <p>19 do when it comes to Medicare reimbursement, we</p> <p>20 would need to find out what was said at the exit</p> <p>21 conference to get a complete picture of what the</p> <p>22 agency knew and intended, correct?</p>	<p style="text-align: right;">Page 373</p> <p>1 THE WITNESS: I believe that there are</p> <p>2 statements made during those conferences that do</p> <p>3 not appear in the formal written comments.</p> <p>4 BY MR. COOK:</p> <p>5 Q. Do you know why?</p> <p>6 A. I don't know why. I believe that it's</p> <p>7 because it's an informal conversation. I mean, we</p> <p>8 often will provide them with details during those</p> <p>9 conferences that we discuss back and forth. As I</p> <p>10 said, sometimes there's conversation, sometimes</p> <p>11 there's not a lot of conversation. It varies based</p> <p>12 on the report.</p> <p>13 Q. The first OIG recommendation listed in</p> <p>14 this June 11, 1998 memorandum says: HCFA</p> <p>15 immediately reduced Medicare reimbursement for</p> <p>16 Albuterol Sulfate by 15 percent, using the new</p> <p>17 authority outlined in the Balanced Budget Act of</p> <p>18 1997.</p> <p>19 That's on Page A2.</p> <p>20 A. Well, you're looking at their comments.</p> <p>21 Yes.</p> <p>22 Q. Yes, ma'am. I'm looking at that the</p>

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<p>1 Q. Okay. So to wrap it up, could you 2 please give testimony to the jury about how you 3 knew \$0.43 was inappropriate? 4 MR. NEAL: Objection to the form. This 5 has been asked and answered a number of times. 6 MR. COOK: Okay. Your objection's on the 7 record. I'll read it again. 8 BY MR. COOK: 9 Q. Could you please testify and tell the 10 jury how you knew that \$0.43 was an inappropriate 11 amount of reimbursement for Medicare to pay for 12 Albuterol Sulfate? 13 A. We base those findings and our 14 recommendations on the work that we did, where we 15 found prices in the marketplace that were far below 16 the price that Medicare was paying. 17 Q. What do you mean by far below? 18 A. I'd have to go back to reports, but the 19 percentages that you were reading off. 20 Q. So in 1996, you found that buying groups 21 were paying between 13 and \$0.19, correct? 22 A. I believe that's true. I don't have the</p>	<p>1 that suggest that something is not appropriate or 2 not reasonable and not provide what is appropriate 3 or reasonable. 4 Q. Do you know whether it was the position 5 of the Office of Inspector General that the Office 6 of Inspector General had no opinion about what an 7 appropriate amount of Medicare Part B drug 8 reimbursement would be? 9 MR. NEAL: Objection to the form. 10 THE WITNESS: I do not know what the 11 Inspector General at that -- during this juncture 12 would have thought would be the appropriate price 13 for a drug. 14 BY MR. COOK: 15 Q. Getting back to Exhibit Abbott 064, 16 Lisa Foley is listed as a program specialist. On an 17 earlier sign-in sheet, it appeared that Lisa Foley 18 was signed in as an attorney. Is Lisa Foley an 19 attorney? 20 A. I believe Lisa Foley is an attorney. 21 Q. And a program specialist? 22 A. She might -- might have been for a short</p>
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<p>1 report in front of me, but yes. 2 Q. And retail pharmacy customers were 3 paying \$0.38 or above, correct? 4 A. We found that 55 percent of them were 5 charging less than what Medicare reimbursed, 45 6 percent were more. 7 Q. And 75 percent were paying \$0.38 or 8 more, correct? 9 A. I don't know if 75 is the correct 10 number. 11 Q. And so can you tell me, how much is far 12 below? 13 A. No. 14 Q. And so it's your testimony that you can 15 opine on what is inappropriate without having an 16 opinion about what is appropriate? 17 MR. NEAL: Objection; asked and answered. 18 This is argumentative. 19 BY MR. COOK: 20 Q. Is that your testimony? 21 A. My testimony is that I could produce 22 findings and recommendations based on what I found</p>	<p>1 period of time. I don't remember her being a 2 program specialist. 3 Q. Okay. But at some point in time she 4 became an attorney? 5 A. I know when I met her, she was an 6 attorney. 7 Q. And when she worked with you on this 8 report, as a program specialist at headquarters, 9 was she acting as an attorney? 10 A. I don't recall any conversations with 11 Lisa about this report. I don't know. 12 Q. Do you recall any conversations with 13 Cynthia Hansford relating to this report? 14 A. I don't remember any of them, no. 15 Q. Do you recall any conversations with 16 Robert Vito relating to this report? 17 A. No, I don't remember any conversations 18 about this report. 19 Q. Stuart Wright? 20 A. No. 21 Q. Back to Ms. Min DeParle's responses to 22 OIG's recommendations in her June 11, 1998 memo.</p>

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<p>1 and I'm here at Page A-2 of Exhibit Abbott 064. The 2 second sentence of Ms. Min DeParle's response, at 3 the bottom there of Page A-2, reads: If given the 4 authority, HCFA would like to increase the discount 5 we now take on the published average wholesale 6 price and base our price on the acquisition cost. 7 Is that consistent with what employees of HCFA 8 advised you about what HCFA would like to do when 9 it comes to Medicare Part B reimbursement? 10 MR. NEAL: Objection. 11 I'm going to instruct you not to answer 12 to the extent that would get into conversations 13 that took place at exit or entrance conferences. 14 BY MR. COOK: 15 Q. Can you answer the question consistent 16 with the instruction? 17 A. I don't recall -- I don't remember any 18 -- any of the conversations that we had with CMS 19 staff about their feelings about this 20 recommendation. 21 Q. The sentence begins, at the bottom of 22 Page A-2: If given the authority, HCFA would like</p>	<p>1 Q. Well, you had discussions with HCFA, 2 correct? 3 MR. NEAL: Objection to the form. I don't 4 know that she said that. 5 BY MR. COOK: 6 Q. You had communications with individuals 7 at HCFA with respect to Medicare drug pricing 8 reimbursement -- and reimbursement, correct? 9 A. We would have had entrance and exit 10 conferences, yes. 11 Q. Were you able to draw any conclusions 12 from the conversations about whether individuals at 13 HCFA understood that published average wholesale 14 price was the same or different than acquisition 15 cost? 16 MR. NEAL: Objection. 17 You can answer that yes, no, or I don't 18 remember. 19 THE WITNESS: I don't -- I don't know 20 what they understood. I don't remember. 21 BY MR. COOK: 22 Q. Well, in the next sentence, Ms. Min</p>
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<p>1 to increase the discount we now take on the 2 published average wholesale price. 3 Was it your understanding that HCFA did not 4 have authority to increase the discount they took 5 on the published average wholesale price? 6 MR. NEAL: Object to the form. 7 You can answer. 8 THE WITNESS: I don't remember ten, you 9 know, years ago what I knew the authority to be or 10 not to be at that time. 11 BY MR. COOK: 12 Q. This sentence refers to both the 13 published average wholesale price and as an 14 alternative basing the price on acquisition cost. 15 Was it your understanding that in June of 1998, the 16 Health Care Finance Administration did not believe 17 that average wholesale price was the same as 18 acquisition cost? 19 MR. NEAL: Objection as to form. 20 THE WITNESS: I don't know what they 21 believed in June of 1988 [sic]. 22 BY MR. COOK:</p>	<p>1 DeParle states that: The acquisition price and the 2 average wholesale price are two distinct pricing 3 methods. 4 First, given the work that you did in '96, 5 '97, and '98 on Medicare Part B drug reimbursement, 6 would you agree that acquisition price and average 7 wholesale price are two distinct pricing methods? 8 MR. WINGET-HERNANDEZ: Objection to form. 9 MR. NEAL: I join the objection. 10 THE WITNESS: I believe that the 11 acquisition prices that we saw for some of the 12 drugs that we reviewed were not similar to average 13 wholesale price. 14 BY MR. COOK: 15 Q. And so paying based upon acquisition 16 price would be a different pricing method than 17 paying based upon average wholesale price, correct? 18 MR. WINGET-HERNANDEZ: Objection to form. 19 MR. NEAL: The same objection. 20 THE WITNESS: I think it would depend on 21 what the average wholesale price -- what the 22 average wholesale price represented for an</p>

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FOR THE DISTRICT OF MASSACHUSETTS

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-----X MDL NO. 1456  
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<p style="text-align: right;">Page 477</p> <p>1 A. It goes -- right now it goes up on the 2 Internet, yes. 3 Q. And the purpose of that distribution 4 process is to put these reports in the hands of 5 policymakers, who can use this information in 6 making policy decisions? 7 MR. DRAYCOTT: Objection. 8 MR. COOK: What's the objection? 9 MR. DRAYCOTT: For one, you didn't, first 10 of all, establish that she would know what the 11 purpose for the distribution is when you asked her 12 what the distribution -- what the purpose is. 13 BY MR. COOK: 14 Q. If I ever ask you a question, Ms. 15 Ragone, and you don't know the answer, feel free to 16 say I don't know. 17 Can you tell me whether one of the purposes of 18 distributing these reports was to put it in the 19 hands of policymakers who can use this information 20 in making policy decisions? 21 A. I believe it is our hope that by putting 22 these findings and recommendations together and</p>	<p style="text-align: right;">Page 479</p> <p>1 was when it changed to -- 2 Q. Can you give me a rough? After 2000? 3 A. Yes. 4 Q. After 2002? After 2001? 5 A. I think after 2002. I'm not quite sure 6 when the legislation was enacted. 7 Q. So whenever the legislation was enacted, 8 perhaps for as many as five years after receiving 9 the conclusions of this report, Medicare Part B 10 continued to pay, for the 22 drugs reviewed in this 11 report, based upon AWP, correct? 12 MR. DRAYCOTT: Objection. 13 THE WITNESS: Based upon, I guess, 14 starting in 1998, they paid AWP minus 5 percent. 15 BY MR. COOK: 16 Q. But still based upon the AWP? 17 A. Correct. 18 Q. Did you ever have an argument with 19 anybody at HCFA about the wisdom of doing that? 20 MR. DRAYCOTT: Objection. 21 THE WITNESS: I'm not -- I don't know if 22 I would call it an argument. We've certainly had</p>
<p style="text-align: right;">Page 478</p> <p>1 putting them in published reports, that the people 2 who this information would be germane to would read 3 it and have access to it. 4 Q. Now, this was in December 1997. Do you 5 know if anytime after December 1997, HCFA, later 6 CMS, abandoned AWP as the benchmark for reimbursing 7 Medicare Part B drugs? 8 A. I haven't been in the drug arena as much 9 at the end. I believe that they are using new 10 strategies now, reimbursement methodologies, in 11 Medicare. 12 Q. When was it that you left the 13 prescription drug -- was that 2004? 14 A. There were a few times I had been the 15 DRIG, and then a team leader, Dave Tawes, began 16 leading most of the drug work, and he would work 17 more often directly with our manager, Robert Vito, 18 so the actual pricing work, I haven't done in quite 19 some time. 20 Q. As of 2004, was Medicare still using AWP 21 to base its Medicare Part B drug reimbursement? 22 A. I don't remember what the time period</p>	<p style="text-align: right;">Page 480</p> <p>1 discussions during exit conferences about the fact 2 that a different pricing methodology might be 3 appropriate. 4 BY MR. COOK: 5 Q. What do they say about that? 6 MR. DRAYCOTT: Objection. 7 Instruct you not to answer. 8 BY MR. COOK: 9 Q. I know you're going to be instructed not 10 to answer, but I do have to put the questions on 11 the record, Ms. Ragone. 12 So let me get this straight. You sit down in 13 a room, at a conference table like this with folks 14 from HCFA; you tell them that AWP exceeds 15 acquisition costs, as defined in the report, by up 16 to ten times, right? 17 A. Yes. 18 Q. You tell them that the OIG recommends 19 that they stop paying that high an amount for 20 prescription drugs, right? 21 MR. DRAYCOTT: Objection to the extent 22 that you're asking for the contents of her</p>

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<p>1 communications to HCFA during the exit conference. 2 MR. COOK: If you'd just instruct her not 3 to answer. Are you instructing her not to answer? 4 MR. DRAYCOTT: I am. 5 BY MR. COOK: 6 Q. So you make whatever communications you 7 do to HCFA in these exit conferences -- 8 MR. DRAYCOTT: Objection. 9 BY MR. COOK: 10 Q. -- after giving them a copy of this 11 report, right? 12 MR. DRAYCOTT: Objection. 13 And you're instructed not to answer. 14 BY MR. COOK: 15 Q. And you make your recommendations, 16 correct? 17 MR. DRAYCOTT: You can answer that 18 question. 19 THE WITNESS: During the exit 20 conferences, we will tell them the findings and 21 recommendations. 22 BY MR. COOK:</p>	<p>1 acquisition cost by as much as ten times? 2 MR. DRAYCOTT: You can answer as to 3 whether or not they responded without revealing the 4 response, if you remember. 5 THE WITNESS: I believe that they stated 6 why they were using the reimbursement strategy they 7 were using at that time. 8 BY MR. COOK: 9 Q. And what was their explanation? 10 MR. DRAYCOTT: Objection. 11 And you're instructed not to answer. 12 BY MR. COOK: 13 Q. Why do you believe HCFA continued to use 14 average wholesale price to pay for Medicare Part B 15 drugs after you issued this report in December 16 1997? 17 MR. DRAYCOTT: Objection. 18 And you're instructed not to answer to 19 the extent your belief is based on communications 20 from HCFA during an exit conference. 21 BY MR. COOK: 22 Q. I'll let you work out that metaphysical</p>
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<p>1 Q. And you encourage them, that is, 2 officials at HCFA, to reimburse prescription drugs 3 based upon something other than the published 4 average wholesale price? 5 MR. DRAYCOTT: Objection. 6 You're instructed not to answer. 7 BY MR. COOK: 8 Q. And, in fact, you do so heatedly, 9 correct? 10 MR. DRAYCOTT: Objection. 11 And you're instructed not to answer. 12 BY MR. COOK: 13 Q. And they respond? 14 MR. DRAYCOTT: You can answer whether or 15 not they responded. 16 THE WITNESS: If they have comments, they 17 will respond when we provide the findings and 18 recommendations. 19 BY MR. COOK: 20 Q. Did they explain why HCFA continued to 21 pay based upon AWP, notwithstanding the fact that 22 HCFA knew average wholesale price could exceed</p>	<p>1 problem. 2 A. I -- I believe -- 3 MR. DRAYCOTT: Well -- 4 THE WITNESS: -- that the -- 5 MR. DRAYCOTT: Let me ask you: Can you 6 answer that question without revealing the content 7 of communication from HCFA during the conference? 8 THE WITNESS: I believe I can. I believe 9 I can. 10 MR. DRAYCOTT: Okay. 11 THE WITNESS: I believe that the level of 12 people that we were talking to believed that the 13 regulations or legislations were set for payment at 14 a certain place and that that's what Medicare was 15 bound to reimburse at. 16 BY MR. COOK: 17 Q. Who at HCFA is responsible for setting 18 Medicare Part B drug payment policy? 19 A. Policy? 20 Q. What the amount is that they would pay. 21 A. I believe that would be regulated or 22 legislated.</p>

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